

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 8432 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

HIMMATSINH KHODSINH JADAV

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 8432 of 2001
MR KJ SHETHNA for Petitioners No. 1-6
MR BY MANKAD PUBLIC PROSECUTOR for Respondent No. 1
MR MUKESH D RAVAL for Respondent No. 1
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CORAM : MR.JUSTICE J.R.VORA

Date of decision: 01/11/2001

ORAL JUDGEMENT

#. Needless it is to say that there cannot be any
straight jacket formula for granting and non-granting

bail to the accused in any of the crimes in which he is alleged to be involved. One incident may not be the precedent for the others. The legal principle which could be deduced could be described by a sentence only that in each case depending upon the circumstances of the facts of the case the Court is required to be exercised sound discretion for granting or not granting the bail. After taking into consideration the various factors involved in the matter, mere prima facie case against the accused may or may not entitle him to admit him to bail.

#. The crux of the incident which is at hand is eve-teasing. The incident has occurred in Bhadran taluka wherein 2 villages are involved viz. village - Sisva and village Sarol. The facts goes to suggest that the girls of village Sarol were teased by the boys of village Sisva and in all 3 incidents occurred in pursuance of this eve-teasing. By Crime Registered No.I-41/2001 one S.T.Bus was stopped at village Sarol and as per the allegations, the persons of Sisva village forced to alight the passenger from the bus and damaged the bus. The incident occurred on 28.7.2000 at 6:30 p.m. The incident for which this application is preferred is Crime Registered No.I-42/2001 registered on 28.7.2001 at 21 hours wherein the incident is referred of 19:30 hours which occurred in the Sim of village Sisva. Present six petitioners are accused in the above said case. As per the allegations the present petitioners were cutting and damaging the crop of banana in the fields of Sim of village Sisva and on being so informed the complainant Kamleshbhai and other three on two scooters reached at the scene of offence. They were complainant Kamleshbhai, Ramanbhai Mathurbhai Patel, Natubhai Umedbhai Patel and Vinodbhai Chotabhai Patel. They noticed that a crowd was cutting crop in the field of Dhirubhai Harmanbhai Patel and, therefore, this four persons shouted and rebuked the crowd. There upon the incident occurred. As per the FIR the present petitioner Nos.1 and 2 with dharia and stick started beating Ramanbhai Mathurbhai who was on scooter. A blow of stick was given by the petitioner No.1 to Ramanbhai on the head so Ramanbhai fell down on the ground and all other persons thereafter indiscriminately started beating to Ramanbhai and the other three including complainant escaped from the place of incident. Ramanbhai succumbed to injuries, during the investigation it was revealed that the other four persons were present petitioner No.3 to 6.

#. Before filing of the charge-sheet the present petitioners filed an application before the Court of Sessions, Dist. Kheda for releasing them on bail but

vide order dated 30.8.2001 that application was rejected by the learned Sessions Judge, Kheda.

#. In pursuance of the above said eve-teasing the third crime which was registered was CR No.I-43/2001 which came to be registered on 29.7.2001 at 16:15 hours which referred to the incident of 28.7.2001, and time during night by which two persons viz. Vajesing Mohanbhai and Raising Bhagvansing as per the allegations were dragged by the complainant side of this case whose dead bodies were not found and for this against four accused FIR under Section 302 and 365 came to be registered and the accused of this Crime Register No.I-43/2001 preferred a bail application in the Court of learned Sessions Judge, Dist. Kheda which was granted and accused were released on bail.

#. Earlier the petitioners filed Misc. Criminal Application No.7017/2001 in this Court for releasing them on bail which came to be disposed of by this Court on 28.9.2001 stating that liberty to the petitioners is granted to withdraw the petition and liberty was also granted to prefer a fresh bail application but not before 20 days from the date on which Misc. Criminal Application No.7017/2001 was decided. It was also directed by this Court if such bail application is filed, the same will be considered on merits.

#. Therefore, now this bail application is filed, as informed to this Court, the charge-sheet against the present accused are filed and, therefore, this application is required to be considered on merits after filing of the charge-sheet by the police.

#. Learned advocate Mr.K.J.Sethna, for the petitioner and learned APP Mr.B.Y.Mankad for the State were heard.

#. Learned advocate Mr.Sethna mainly stressed upon the fact that the peace prevails in both the villages which are involved in the incident, at least today nothing is coming out from the Investigating Officer that any untoward incident has taken place. It was further urged that in the circumstance and in the peculiar facts as narrated above and having regard to the root cause for the three incidents which have occurred, the present petitioners may be released on bail on any conditions on which the Court thinks fit. It was also urged that the petitioners have no criminal record but the petitioners are persons of social repute and have sound standing in the society. If they are released on bail they are not likely to flee from the justice. On merits of the case

it was argued that having regard to the postmortem note there are only 9 injuries out of them mostly are the CLW and no incised wound is found on the body of the deceased and if the dharia is used there bound to be incised wound more than one if the incident has occurred in a manner as narrated by the complainant and the witnesses. It was therefore urged that the petitioners may be released on bail.

#. On the other hand, opposing the bail application learned APP Mr.Mankad argued that there is a prima facie strong case against the accused because there is a evidence of complainant and other two eye witnesses alongwith the medical evidence. The cause of death as revealed by the postmortem note is due to the injuries inflicted on the body of the deceased. The facts of the prosecution case according to learned APP is very clear that all the six accused took active part in the incident. It was urged by learned APP that the peace prevails at present only because the petitioners are in the jail and if they are released the disturbance to law and order is likely, more so because the government has announced Panchayat election in December and complainant and the accused group are in opposite political parties, therefore, it was urged that the accused may not be released on bail.

##. Going through the papers and the contention advanced on behalf of both the learned counsel it cannot be denied that there is strong prima facie case against the present petitioners as per the prosecution evidence at this stage. As said earlier this may not be the only reason for granting or not granting bail to the accused. The various factors will have to be taken into consideration having regard to the facts of each case. Undoubtedly the present case contains peculiar facts. On eve-teasing three untoward incidents occurred in which there was damage to the public property like S.T.Bus. In one incident the two persons of this accused side lost their lives even their dead bodies could not be found. In the present incident the complainant side lost the life of one person Ramanbhai Mathurbhai. Though correct it is to say that these are not cross cases but they are connected cases. In CR No.I-43/2001 the accused i.e. the complainant side of the present case have been released on bail by the learned Sessions Judge. No untoward incident thereafter is occurred. Today nothing is reported to the Court that the law and order at any time was breached and the public tranquility of the villages was disturbed. Having regard to the peculiar facts of the case even though there is a prima facie case against

the present petitioners, exercising the discretion, it appears that the accused may be released on bail. The accused have their own status in the society. There is no least apprehension that the accused would not be available for trial. In the facts and circumstances of the case as narrated above, having regard to the root cause of the incident and having regard to the social status of the accused no purpose of law is required to be served if they are still to be kept behind the bars. Apprehension expressed by the learned APP as to the conflict which may arise during the election of Panchayat which is forthcoming can be redressed by the stringent conditions, which will serve the purpose of law. But, for that reason in this particular case it appears that the liberty of the citizen may not be circumscribed to keep them in jail for facing of the trial. Therefore, in this view of the matter following order is passed.

##. This Criminal Misc. Application is allowed. Each of the petitioners is ordered to be released on bail on furnishing of solvent surety of Rs.10,000/- (Rupees Ten Thousand Only) and on furnishing the personal bond of the like amount. This bail order will be subject to the following conditions.

(a) None of the petitioners shall enter in the radius of 20 kilometers of village Sisva and Sarol in view of both the villages are at the distance of 5 kilometers except with the permission of learned Sessions Judge. At appropriate juncture the petitioner will be at liberty to apply to the learned Sessions Judge to waive this condition, if such application is filed, the learned Sessions Judge shall dispose of the same on merits. That each of the accused shall inform the learned Sessions Judge as well as to Bhadran Police Station about his address after releasing on bail.

(b) None of the accused shall tamper with the evidence or so threaten any of the witnesses so as to prevent them from giving evidence.

##. Rule is made absolute to that extent. D.S. is permitted.

(J. R. VORA, J.)

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